

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: ICC-02/04-01/05
Date: 15 February 2008

PRE-TRIAL CHAMBER II

Before: Judge Fatoumata Dembele Diarra, Single Judge

Registrar: Mr Bruno Cathala

SITUATION IN UGANDA

CASE 01/05

***THE PROSECUTOR v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO
and DOMINIC ONGWEN***

Public Document

**Decision on the Unsealing and Reclassification of Certain Documents in the
Record both of the Situation and of the Case and Annexes**

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor

Mr Eric MacDonald, Trial Lawyer

I, Fatoumata Dembele Diarra, judge at the International Criminal Court (“the Court”);

NOTING the *Decision Appointing a Single Judge for Unsealing of Documents*, dated 31 May 2006, by which Pre-Trial Chamber II appointed Judge Fatoumata Dembele Diarra as Single Judge for the unsealing of documents in the situation in Uganda and in the case of *The Prosecutor v. Joseph KONY, Vincent OTTI, Raska LUKWIYA, Okot ODHIAMBO and Dominic ONGWEN*;

NOTING the Chamber’s previous decisions on the unsealing of documents in the record both of the situation and of the case, dated 13 October 2005,¹ 2 November 2005,² 9 March 2006,³ 6 July 2006⁴ and 2 February 2007;⁵

NOTING the *Order to the Prosecutor and the Victims and Witnesses Unit* [hereinafter “VWU”] *to Submit Observations on the Unsealing of Certain Documents in the Record both of the Situation and of the Case*, dated 12 July 2007, by which the Chamber requested the Prosecutor to submit under seal, *ex parte* only available to the Office of the Prosecutor and VWU, a proposal detailing the treatment of any document filed in the record of the situation and of the case until the present day which has not been the subject of a previous decision by the Chamber or the Single Judge, including the supporting reasons for the proposed treatment;

NOTING that the Prosecutor was also requested to follow the official numbering of the record of the situation and of the case and to include all of his proposals in one single document replacing his previous proposals;

¹ ICC-02/04-01/05-52.

² ICC-02/04-01/05-62.

³ ICC-02/04-01/05-78.

⁴ ICC-02/04-01/05-89-tENG.

⁵ ICC-02/04-05-135.

NOTING that the Order further requested that VWU, in respect of the proposals made by the Prosecutor, submit its observations on the treatment of the corresponding documents in the record both of the situation and of the case, and on the possibility of unsealing said documents, including the need, if any, to maintain the redactions proposed by the Prosecutor prior to unsealing, and the scope of the redactions or the need for further redactions;

NOTING the Prosecutor's public observations submitted in its "Prosecution's Submission of Observations on the Further Unsealing of Documents of the Record", dated 2 August 2007 and which included three under seal, *ex parte* annexes;

NOTING VWU's observations submitted in its "Observations of the Victims and Witnesses Unit on the Further Unsealing of documents of the Record", dated 24 August 2007, to the Chamber under seal, *ex parte*, available to the Office of the Prosecutor only;

NOTING that the Prosecutor has not filed any further possible observations subsequent to those filed by VWU;

CONSIDERING articles 57(3)(c), 67(1) and 68(1) of the *Rome Statute* ("the Statute"), rules 15, 87 and 88 of the *Rules of Procedure and Evidence* ("the Rules"), regulations 8 and 42(3) of the *Regulations of the Court* and regulation 14 of the *Regulations of the Registry*;

NOTING the Chamber's functions and powers under article 57(3)(c) of the *Rome Statute* ("the Statute") relating to the protection and privacy of victims and witnesses and under article 68 of the Statute;

CONSIDERING that article 67(1) of the Statute enshrines the principle that proceedings before the Court shall be public;

NOTING that, pursuant to article 68(1) of the Statute, “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”;

NOTING that the protection of victims and witnesses may render redactions necessary prior to the publication of certain documents, and that the Chamber has the power to make redactions in order to protect victims and witnesses pursuant to articles 57(3)(c) and 68(1) of the Statute and rule 87 of the Rules;

NOTING that the Chamber has also ensured the redaction of any detail or information which, if disclosed, could jeopardise operational effectiveness, or the effectiveness of strategies or measures taken by the Court for the protection of a victim or witness;

NOTING that rule 15 of the Rules requires the Registrar to set up a database “containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data”, and that, “[i]nformation on the database shall be available to the public in the working languages of the Court”;

NOTING, furthermore, that pursuant to regulation 8(c) of the *Regulations of the Court*, all “[d]ecisions and orders of the Court and other particulars of each case brought before the Court as described in rule 15” shall be published on the website of the Court;

NOTING that the Chamber has considered it necessary to redact any detail or information which could result in the disclosure of the identity or the location of victims and witnesses, as well as any other detail which, if revealed, could jeopardise their security;

NOTING that upon receipt of divergent proposals from the Office of the Prosecutor and VWU, the Chamber decided to take a protective approach in light of the unstable situation in the field and in accordance with its obligations under articles 57(3)(c) and 68(1) of the Statute, whilst ensuring the principle that proceedings before the Court shall be public;

CONSIDERING that the Chamber considers that exercising the Court's mandate to protect victims and witnesses under article 68(1) of the Statute may justify redactions to protect information sources or to safeguard their future use where such information sources contribute to the exercise of this protection mandate;

CONSIDERING that the observations submitted enabled the Single Judge to form her own opinion of the redactions to make, whilst taking into account the foregoing principles and considerations, in particular the protection of victims and witnesses having regard to the situation in the field, as well as the principle that proceedings before the Court shall be public;

CONSIDERING that in his observations, the Prosecutor refers to a limited number of documents in the record both of the situation and of the case;

CONSIDERING that VWU based its observations on the treatment proposed by the Prosecutor on this limited number of documents, reiterating the official numbering of each document so that reference may more readily be made thereto;

CONSIDERING that the Prosecutor proposed a treatment and, in particular, made observations on the unsealing of certain documents filed in the record both of the situation and of the case before the Appeals Chamber and certain decisions rendered by that chamber;

CONSIDERING that under regulation 42(3) of the *Regulations of the Court*, any application to vary a protective measure shall be made to the chamber which issued

the order and that, in the instant case, the documents and decisions in relation to which the Prosecutor is requesting treatment, are before the Appeals Chamber;

CONSIDERING, accordingly, that the Appeals Chamber alone is competent to order the unsealing of documents filed with it and of the decisions taken by it;

CONSIDERING that, by decision ICC-02/04-01/05 OA dated 04 February 2008, the Appeals Chamber made public or public in a redacted version the documents filed with it and which were referred to in the Prosecutor's observations submitted to the Single Judge on 2 August 2007;

CONSIDERING that among such documents, the Prosecutor submitted an application, ICC-02/05-01/04-85-US-Exp dated 11 May 2006, entitled "Application to Suspend or Stay Consideration of Prosecutor's Application for leave to Appeal" to Pre-Trial Chamber II and simultaneously⁶ submitted to the Appeals Chamber an application to the same effect entitled "Application for Appeals Chamber to Give Suspensive Effect to Prosecutor's Application for Extraordinary Review" registered as ICC-02/05-01/04-84-US-Exp;

CONSIDERING that by decision ICC-02/04-01/05 OA of 4 February 2008, the Appeals Chamber made document ICC-02/05-01/04-84-US-Exp public;

CONSIDERING, accordingly, that the Single Judge considers that the similar document filed with Pre-Trial Chamber II as ICC-02/05-01/04-85-US-Exp should be treated in like manner;

CONSIDERING, furthermore, that document **ICC-02/04-01/05-81-US Annex 1**, Letter from the Registrar to Mr Tibaruha, Solicitor General, dated 7 April 2006, Re: Dominic ONGWEN, has already been made public in redacted form as **ICC-02/04-**

⁶ ICC-02/05-01/04-85-US-Exp, para. 8

01/05-80-US Annex A, by the decision to unseal, ICC-02/04-01/05-89, rendered on 6 July 2006 by the Single Judge;

CONSIDERING, accordingly, that document **ICC-02/04-01/05-81-US Annex 1** and any other copy of this same letter shall be treated in like manner and also be made public with the same redactions;

FOR THESE REASONS,

DECIDE that the following documents currently filed in the record both of the situation and of the case shall be reclassified as follows:⁷

The following documents are made public without redactions:

- a) **ICC-02/04-01/05-81-US**, Report from the Registrar to Pre-trial Chamber II regarding the progress conducted by the Republic of Uganda to execute the warrant of arrest;
- b) **ICC-02/04-01/05-81-US Annex 2**, Letter from Mr Tibaruha, Solicitor General of the Republic of Uganda dated 7 April 2006 on the requests for arrest and surrender of leaders of the Lord's Resistance Army (LRA);
- c) **ICC-02/04-01/05-81-US Annex 3**, Note Verbale from the Registrar to the Minister of Justice of the Government of Uganda, dated 24 March 2006;
- d) **ICC-02/04-01/05-85-US-Exp**, Application to Suspend or Stay Consideration of Prosecutor's Application for leave to Appeal;
- e) **ICC-02/04-01/05-126-US-Exp**, *Informations sur le décès de Raska LUKWIYA*;

⁷ Except otherwise indicated in this decision, translations are reclassified in the same manner as the original documents and the annexes are reclassified in the same manner as the documents they are appended to.

- f) **ICC-02/04-01/05-229-US-Exp Annex 1**, Annex 1 to Prosecution's Request that the Warrant of Arrest for Raska LUKWIYA Be Withdrawn and Rendered Without Effect Because of His Death;

DECIDE that the following documents will henceforth bear the words “under seal, EX PARTE, only available to the Prosecutor and to the VWU”:

- a) **ICC-02/04-01/05-46-US-Exp**;
- b) **ICC-02/04-01/05-83-US-Exp Annex B**;
- c) **ICC-02/04-01/05-83-US-Exp Annex C**;

DECIDE that the redacted version, as submitted by the Prosecutor, of the following documents annexed to this decision shall be filed in the record of the situation or of case, as the case may be, and that the documents so redacted shall be classified as public:

- a) **ICC-02/04-01/05-81-US-Exp Annex 1**, Letter from the Registrar to Mr Tibaruha, Solicitor General, dated 7 April 2006, Re: Dominic ONGWEN;
- b) **ICC-02/04-01/05-126-US-Exp Annex**, Letter dated 30 October 2006 from Mr L. Tibaruha, Solicitor General, Re: Notice confirming the death of Raska LUKWIYA;
- c) **ICC-02/04-01/05-250-US-Exp Annex C**, Letter dated 30 July 2007 in which the Government of Uganda notified the Registry of its consent to unsealing the letter of 21 August 2006 and 30 October 2006;

DECIDE that the redacted version as submitted by VWU of the following documents annexed to this decision shall be filed in the record of the situation or of the case, as the case may be, and that the documents so redacted shall be classified as public:

- a) **ICC-02/04-01/05-106-US-Exp**, Notification that Government of Uganda Has Requested The Office of The Prosecutor To Provide Assistance in Conducting DNA Tests On The Alleged Body of Raska LUKWIYA and Letter dated 21 August 2006 from Mr L. Tibaruha, Solicitor General, Re: Death of Raska LUKWIYA;
- b) **ICC-02/04-01/05-229-US-Exp**, Prosecution's Request that the Warrant of Arrest for Raska LUKWIYA Be Withdrawn and Rendered Without Effect Because of His Death;

ORDER the Prosecutor to file the redacted version in the record of the situation or the case, as the case may be, irrespective of whether the Prosecutor or VWU made the redactions;

DECIDE to unseal the following document only with respect to its existence and its title:

- **ICC-02/04-01/05-254-US-Exp**, Observations of the Victims and Witnesses unit on the Further Unsealing of Documents of the Record;

DECIDE, until further order, to reserve any further decision on the disclosure of documents filed in the record both of the situation and the case which may be necessary for the effective exercise of the rights of the Defence pursuant to article 67 of the Statute;

DECIDE, until further order, to reserve any further decision on the unsealing of documents in the record both of the situation and of the case.

Done in both English and French, the French version being authoritative.

[signed]

Judge Fatoumata Dembele Diarra
Single Judge

Dated this 15 February 2008

At The Hague